

Date of decision: 16/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VALIMOHMD ISMAIL AHMEDABAD TAKORAWALA & ANR.

vs

STATE OF GUJARAT & ORS.

Appearance:

Shri S.H. Sanjanwalla, Advocate, for the Petitioners
Shri D.N. Patel, Asst. Govt. Pleader, for the Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Deputy Secretary, Revenue, Department at Gandhinagar (respondent No. 2 herein) on behalf of the State of Gujarat (respondent No. 1 herein) on 18th April 1988 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of petitioner No. 1 to be in excess of the ceiling limit by 1402.74 square meters after upsetting the order passed by the Competent Authority at Surat (respondent No. 3 herein) declaring the holding of the petitioners not to be surplus for the purposes of the Act.

2. The facts giving rise to this petition move in a narrow compass. Petitioner no. 1 filed his declaration in the prescribed form with respect to his holding within the urban agglomeration of Surat. That form was duly processed by respondent No. 3. After observing necessary formalities under sec. 8 of the Act, by his order passed on 16th September 1985, respondent No. 3 held that the holding belonged to both the petitioners and neither petitioner's holding was beyond the ceiling limit prescribed for the urban agglomeration of Surat. Its copy is at Annexure A to this petition. It appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision was therefore contemplated. Thereupon a show-cause notice came to be issued to the petitioners on 11th November 1987 under sec. 34 of the Act calling upon them to show cause why the order at Annexure A to this petition should not be revised. The petitioners appear to have filed their reply on 18th December 1987. After hearing the petitioners, by the order passed by respondent No. 2 on behalf of respondent No. 1 on 18th April 1988, the order at Annexure A to this petition was set aside and the entire holding was declared to be belonging to petitioner No. 1 and it was declared to be in excess of the ceiling limit by 1402.74 square meters. Its copy is at Annexure D to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition.

3. It transpires from the impugned order that it was brought to the notice of respondent No. 2 that the open land was developed for construction of houses for members of a co-operative society after obtaining the necessary building permission and approval of the plan from the local authority. A copy of the building permission issued on 6th September 1986 is at Annexure B to this petition and a copy of the plan approved on 6th September 1986 is at Annexure C to this petition. This was certainly done prior to the issue of the show-cause notice on 11th November 1987. It transpires from the impugned order at Annexure D to this petition that the construction work was complete and the matter was referred to the State Government for exemption under sec. 20 of the Act. It thus becomes clear that during the intervening period from the date of the order at Annexure D to this petition to the date of the show-cause notice issued under sec. 34 of the Act, the parties had changed their equities.

4. It may be noted that the order at Annexure A to this petition was passed as early as on 16th September 1985 and the show-cause notice for its revision under sec. 34 of the Act was issued nearly 2 years and 2 months thereafter on 11th November 1987. Since the parties had changed equities, it has been urged

by learned Advocate Shri Sanjanwalla for the petitioners that the revisional powers under sec. 34 of the Act could not have been exercised for upsetting the order at Annexure A to this petition after a period of 2 years and 2 months. As against this, learned Assistant Government Pleader Shri Patel for the respondents has urged that, in view of the binding Division Bench ruling of this Court in the case of Haresh Kantilal Vora v. Competent Authority and Additional Collector, Rajkot reported in 1992(2) Gujarat Law Herald 424, no fault can be found with the order at Annexure D to this petition exercising revisional powers after 2 years and 2 months.

5. In this connection a reference deserves to be made to the ruling of this Court in the case of Jayantilal Kasalchand Shah v. State of Gujarat & Anr. as relied on by learned Advocate Shri Sanjanwalla for the petitioners. The aforesaid Division Bench ruling of this Court in the case of Haresh Kantilal Vora (*supra*) has been explained therein. In that case also the revisional powers under sec. 34 came to be exercised after 2 years from the date of the order under sec. 8(4) of the Act. It was found therein that in the meantime construction had sprung up in the land in question. In that context, it was held that exercise of revisional powers under sec. 34 of the Act after 2 years was not justified.

6. The aforesaid ruling of this Court in the case of Jayantilal Kasalchand Shah (*supra*) is on all fours applicable in the present case. It clearly transpires from the material on record that construction has sprung up in the open land during the period between the date of the order at Annexure A to this petition and the date of the show-cause notice issued on 11th November 1987 about 2 years and 2 months after the order at Annexure A to this petition. In that view of the matter, there was no justification in exercise of revisional powers under sec. 34 of the Act.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to this petition cannot be sustained in law. It has to be quashed and set aside.

8. In the result, this petition is accepted. The order passed by respondent No.2 on behalf of respondent No. 1 on 18th April 1988 at Annexure D to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
